

Decision **DRAFT DECISION OF ALJ WONG** (Mailed 3/18/2005)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Establish  
Policies and Rules to Ensure Reliable, Long-Term  
Supplies of Natural Gas to California.

Rulemaking 04-01-025  
(Filed January 22, 2004)

**OPINION REGARDING MOTION FOR RECONSIDERATION  
OF RULING REGARDING NOTICES OF  
INTENT TO CLAIM COMPENSATION**

**I. Summary**

This decision addresses the “Motion for Reconsideration of Administrative Law Judge’s Ruling Regarding Notices of Intent to Claim Compensation” (Motion for Reconsideration) that was filed by the Ratepayers for Affordable Clean Energy (RACE) on September 22, 2004, and “Lynda Arakelian’s Motion for Protective Order Regarding Personal Financial Information” (Motion for Protective Order) that was filed on September 22, 2004.

RACE’s Motion for Reconsideration challenges the determination that was made in the August 24, 2004 “Administrative Law Judge’s Ruling Regarding Notices of Intent to Claim Compensation” (NOI Ruling). In that NOI Ruling, RACE was deemed ineligible for intervenor compensation.

Today’s decision agrees with the NOI Ruling that RACE failed to make an adequate showing when it submitted its Notice of Intent to Claim Compensation (NOI), and is therefore ineligible for intervenor compensation in this proceeding. Accordingly, we deny RACE’s Motion for Reconsideration and the Motion for Protective Order. We direct the Docket Office to destroy the financial

information contained in the sealed envelope which is attached to the Motion for Protective Order.

## **II. Background**

In the June 18, 2004 “Scoping Memo and Ruling of the Assigned Commissioners for Phase I” (Scoping Memo), the procedure for seeking intervenor compensation in this rulemaking was described. Three entities, including RACE, filed their respective NOIs.

On August 24, 2004, the NOI Ruling was issued, which addressed all three NOIs. The NOI Ruling determined that RACE “has not met the eligibility requirements of Public Utilities Code § 1804,<sup>1</sup> and is therefore ineligible to file a claim for an award of compensation in this proceeding.” (NOI Ruling, p. 11.)<sup>2</sup>

RACE’s Motion for Reconsideration requests that the NOI Ruling “be reconsidered and that RACE be found eligible to file a claim.” (Motion for Reconsideration, p. 2.) RACE’s Motion for Reconsideration was also accompanied by the Motion for Protective Order. The Motion for Reconsideration states in part that “RACE and Ms. Arakelian are now submitting her financial information under seal, along with a motion for a protective order, in order to establish that a hardship exists.” (Motion for Protective Order, p. 6.)

No one filed responses to either motion.

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<sup>1</sup> All code section references are to the Public Utilities Code.

<sup>2</sup> The NOI Ruling determined that the two other entities met the eligibility requirements of § 1804.

### **III. RACE's Position**

RACE's Motion for Reconsideration makes three arguments as to why the NOI ruling should be reconsidered and why RACE should be found eligible to file a claim for intervenor compensation in this proceeding.

RACE's first argument is that it qualifies for intervenor compensation because "it was affirmatively authorized to represent at least one ratepayer in this proceeding and the ratepayer cannot afford to participate unless there is an award of compensation at the conclusion of the proceeding." (Motion for Reconsideration, p. 3.) RACE contends that it "was authorized to represent ratepayer Lynda Arakelian in this proceeding." (*Id.*)

RACE asserts that the NOI Ruling incorrectly concluded that RACE was not authorized to represent Arakelian. RACE contends that none of the reasons cited in the NOI Ruling are adequate to support the conclusion that RACE was not the representative of Arakelian.

The first reason the NOI Ruling gave as to why RACE was not authorized to represent Arakelian was that there were no documents in RACE's NOI to support the authorization arrangement between Arakelian and RACE. RACE asserts that this is not a valid reason for rejecting the NOI "because there is no requirement that the NOI contain documentary evidence of a formal arrangement between the representative and the represented ratepayer." (Motion for Reconsideration, p. 4.) Even if such a requirement exists, RACE implies that the "Verification" of Paul Fenn on Arakelian's behalf, which was part of RACE's NOI, was sufficient to meet this requirement. RACE contends that Rule 2.4(e) of the Commission's Rules of Practice and Procedure "specifically authorizes verification by a representative, and nothing in the Rule indicates that

lesser weight will be given to a statement verified by a representative on behalf of the person represented.” (Motion for Reconsideration, p. 4.)

RACE also notes that the Commission’s “Intervenor Compensation Program Guide” (Program Guide) at page 9 “calls for ‘evidence of authorization’ without specifying the specific form of evidence that is required.” (Motion for Reconsideration, p. 4, fn. 1.) RACE further states it “is now providing Ms. Arakelian’s supporting declaration (and others) to avoid any further doubt about the authority that RACE received to intervene in this proceeding.” (*Id.*) Attached to the Motion for Reconsideration are the declarations of Arakelian, and the declarations of Michael Johnson and Krikur Didonian. RACE asserts that Arakelian’s declaration establishes that “RACE was in fact formally authorized from the beginning of this proceeding to represent Ms. Arakelian.” (*Id.*, p. 4.) In footnote 2 of the Motion for Reconsideration, RACE cites the Johnson and Didonian declarations in support of its argument that it “had also been authorized to intervene on behalf of its organization-members, some of whom have their own individual ratepayer-members who expect their respective organizations to participate directly or indirectly in public proceedings relating to clean, affordable energy.”

According to RACE, the second reason the NOI Ruling gave as to why RACE was not authorized to represent Arakelian was because of RACE’s February 20, 2004 Motion to Intervene, which stated that RACE is a coalition whose members consist of ten named entities as well as others. RACE contends that the Motion to Intervene “was neither intended nor required to prove RACE’s authority to represent Ms. Arakelian for purposes of qualifying to claim compensation.” (Motion for Reconsideration, p. 4.) RACE further states that its “experience in advocating for its members, as well as the overlap between the

members' and Ms. Arakelian's concerns, make RACE an outstanding choice as her representative." (*Id.*)

RACE contends that the NOI Ruling's third reason for determining that RACE was ineligible for intervenor compensation was that there was "no evidence that Ms. Arakelian authorized *Local Power* to be her representative." (Motion for Reconsideration, p. 5.) RACE asserts that this was irrelevant "to the issue of RACE's qualification to file a claim for compensation." (*Id.*) RACE states that it is Arakelian's representative, and that Local Power is not her representative.

RACE's second argument as to why the Commission should reconsider RACE's eligibility for intervenor compensation is that "it would be a significant financial hardship for RACE and those it represents to participate in this proceeding without compensation." (Motion for Reconsideration, p. 5.) RACE asserts that the NOI Ruling determined that no evidence of hardship was shown. RACE asserts that § 1804(a)(2)(B) "gives RACE the option of presenting evidence of a hardship either when it submits its NOI or when it submits its claim for compensation." (Motion for Reconsideration, p. 5.) RACE contends that the NOI Ruling addressed the significant hardship "issue before RACE put forward its evidence to support a finding of hardship" and "[r]ather than waiting until it files its claim for compensation and risk a finding that the issue was already adjudicated, RACE and Ms. Arakelian are now submitting her financial information under seal, along with a motion for a protective order, in order to establish that a hardship exists." (*Id.*, p. 6.) RACE also attached two declarations by its "organization-members" to "establish that the organization-members cannot afford to participate on their own in this proceeding." (*Id.*, p. 6, fn. 4.)

The third argument of RACE as to why the Commission should reconsider RACE's eligibility for intervenor compensation is that any failure to serve its NOI on the service list was non-prejudicial. RACE states that it "strongly believes that it complied with all requirements for service of its NOI on the persons entitled to receive service, including the Administrative Law Judges," and if the required service was not done, "then it was entirely an innocent mistake." (Motion for Reconsideration, p. 6.) RACE further states that it "always complies with the requirements for service and is unaware of any problems in its past performance (aside from the NOI)." (*Id.*) RACE also states that "[g]iven the important contributions that RACE has made in this proceeding, its otherwise perfect track record in filing and serving documents, and the lack of prejudice caused by the non-receipt of the NOI," RACE should be "found eligible to file a claim for compensation." (*Id.*, p. 7.)

#### **IV. Discussion**

RACE's Motion for Reconsideration seeks a review of the determination reached in the NOI Ruling regarding RACE's ineligibility for intervenor compensation. As a preliminary matter, we note that the Motion for Reconsideration amounts to an interlocutory appeal of the NOI ruling. The Commission generally looks with disfavor on interlocutory appeals, and is reluctant to review evidentiary and procedural rulings before the proceeding has been submitted. (79 CPUC2d 343, 421; see Rule 65.) The reasoning for our reluctance has been expressed as follows:

"There is no appeal from a procedural or evidentiary ruling of a presiding officer prior to consideration by the Commission of the entire merits of the matter. The primary reasons for this rule are to prevent piecemeal disposition of litigation and to prevent litigants from frustrating the Commission in the

performance of its regulatory functions by inundating the Commission with interlocutory appeals on procedural and evidentiary matters.” (81 CPUC 389, 390.)

A similar interlocutory appeal concerning the ineligibility of an intervenor to claim compensation was addressed and denied in Decision (D.) 00-04-059. In D.00-04-059, we agreed with the administrative law judge (ALJ) that the intervenor failed to establish in its NOI that it qualified as a customer.

In this situation, to provide finality to RACE's NOI issue, this matter has been referred to the full Commission for a determination pursuant to Rule 65.

The NOI Ruling at page 2 and 3 set forth the eligibility requirements for intervenor compensation as contained in § 1801 and following. The NOI Ruling noted that "Since all three of the parties seeking intervenor compensation purport to make a showing that their participation would pose a significant financial hardship," the NOI Ruling addressed their eligibility for intervenor compensation pursuant to § 1804(b)(1).<sup>3</sup>

The NOI Ruling addressed RACE's NOI at pages 3 to 7. One of the purposes of the NOI Ruling is to identify which customer category the intervenor qualifies under. (79 CPUC2d 628, 644, 649; 82 CPUC2d 627, 631.) Thus, the NOI Ruling addressed whether RACE qualified as a "customer." Since RACE's NOI stated that it had been authorized by Arakelian to represent her in this proceeding, the NOI Ruling analyzed Arakelian's authorization. The NOI Ruling stated that except for the Verification to RACE's NOI, which was signed

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<sup>3</sup> Section 1804(b)(1) states in pertinent part: "If the customer's showing of significant financial hardship was included in the notice filed pursuant to subdivision (a), the administrative law judge, in consultation with the assigned commissioner, shall issue within 30 days thereafter a preliminary ruling addressing whether the customer will be eligible for an award of compensation. The ruling shall address whether a showing of significant financial hardship has been made."

by Paul Fenn<sup>4</sup> supposedly on Arakelian's behalf, there were no documents "to show that Arakelian authorized RACE or Local Power to be her representative." (NOI Ruling, p. 5.) The NOI Ruling concluded that "RACE's NOI and its motion to intervene fail to establish that RACE qualifies as a 'customer' who has been authorized by a customer to be its representative." (*Id.*)

Although the NOI Ruling determined that RACE was not a "customer" within the meaning § 1802(b)(1), "the second reason for concluding that RACE was ineligible for an award of intervenor compensation was because RACE has failed to make a sufficient showing about significant financial hardship." (NOI Ruling, p. 6.) Specifically, the NOI Ruling stated that "RACE failed to include in its NOI any of Arakelian's pertinent financial information to support RACE's claim that it would be a significant financial hardship on Arakelian to participate in this proceeding." (*Id.*, pp. 6-7.)

The NOI Ruling also stated that a "third reason for denying RACE's eligibility for intervenor compensation is that RACE failed to serve the NOI on the assigned ALJs, and possibly on others as well." (NOI Ruling, p. 7.) The NOI Ruling noted that despite the signed Certificate of Service attached to the NOI, the assigned ALJs were not served with the NOI.

We have reviewed and considered each of the arguments in the Motion for Reconsideration and the Motion for Protective Order.

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<sup>4</sup> Fenn has represented himself in pleadings in this proceeding as one of the representatives of RACE and the founder and executive director of Local Power. Local Power was one of the entities identified in the Motion to Intervene as part of RACE's coalition. RACE's NOI was signed by Fenn of Local Power representing RACE, and the Verification attached to RACE's NOI was listed as "Paul Fenn," "Ratepayers for Affordable Clean Energy," and signed by Fenn.

The first hurdle to overcome when one seeks intervenor compensation is to qualify as a “customer” within the meaning of the intervenor compensation statutes. RACE makes essentially three arguments as to why it believes it should be considered a “customer.” The first argument of RACE is that “there is no requirement that the NOI contain documentary evidence of a formal arrangement between the representative and the represented ratepayer.” (Motion for Reconsideration, p. 4.) RACE argues in footnote 1 of its Motion for Reconsideration that the Program Guide does not specify the “specific form of evidence that is required” to establish this formal arrangement.

RACE’s argument overlooks the statement in D.98-04-059 which states that “A ‘representative authorized by a customer’ connotes a more **formal arrangement** where a customer, or a group of customers, selects a presumably more skilled person to represent the customers’ views in a proceeding.” (79 CPUC2d at 648, emphasis added.) In the Program Guide, which RACE cites to in its Motion for Reconsideration, this “formal arrangement” applies to a Category 2 customer, and to qualify as a Category 2 customer, “you must provide evidence of authorization from at least one customer.”<sup>5</sup> (Program Guide, January 2004, p. 3.) At page 9 of the Program Guide, under the heading of “Guidelines for Completing a Request for Award of Compensation,” a similar description about the Category 2 customer is found, including the statement that for a Category 2 customer, “you must provide evidence of authorization from at least one customer.”

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<sup>5</sup> A Category 2 customer is defined in § 1802(b)(1)(B) as a “representative who has been authorized by a customer.”

The NOI Ruling determined that RACE was attempting to qualify for intervenor compensation as a Category 2 customer. Nothing in RACE's Motion for Reconsideration challenges that assumption.

The NOI that RACE submitted failed to include the evidence of authorization from at least one customer, namely Arakelian.<sup>6</sup> Although RACE refers to itself in its Motion for Reconsideration as having "experience in advocating for its members," RACE failed to include in its NOI evidence that Arakelian authorized RACE to be her representative. The NOI Ruling correctly concluded that RACE failed to establish that it qualified as a Category 2 customer.

The second argument of RACE is that the Commission should consider the Verification that was signed by Fenn to be sufficient evidence that Arakelian authorized RACE to be her representative. This argument is without merit.

RACE's argument that Fenn's Verification should suffice as evidence of Arakelian's authorization does not establish that RACE is a "representative who has been authorized by a customer." (§ 1802(b)(1)(B).) As noted in the NOI and the NOI Ruling, it was supposedly Arakelian "who has authorized RACE to represent her in this proceeding." (See NOI Ruling, p. 6.) Fenn's Verification did not contain any statement that Arakelian had authorized RACE to be her representative, except for the generic statement that "The statements in the foregoing document [the NOI] are true of my own knowledge, except for those matters which are stated on information and belief, and as to those matters, I

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<sup>6</sup> The Program Guide's introduction describes how the Commission's Public Advisor's Office "can share information and advice regarding the Intervenor Compensation Program, as well as provide sample filings..." to those who need assistance.

believe them to be true.” (NOI, Verification, p. 9, emphasis added.) The statements made in the NOI regarding Arakelian’s authorization, which Fenn declares is true of his own knowledge, do not establish that Arakelian authorized RACE to be her representative.<sup>7</sup> Fenn’s Verification lacks the nexus to establish that it was Arakelian who authorized RACE to be her representative in this proceeding.

RACE’s NOI is similar to the factual situation that was addressed in D.00-04-059. In that decision, we affirmed an earlier ruling finding that the intervenor was ineligible to file a claim for compensation because the intervenor’s NOI failed to establish which customer category the intervenor qualified under, and failed to show that a customer had authorized the intervenor to be her representative. (See D.00-04-059, pp. 7-8.)

RACE’s third argument as to why it should be considered a customer is that it now seeks to provide the signed declaration by Arakelian, and two other declarations of individuals who belong to organizations that are coalition members of RACE.

At the time someone files a notice of intent to claim compensation in a proceeding, the entity must demonstrate how it qualifies as a customer. As discussed above, RACE’s NOI did not contain a declaration by Arakelian that

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<sup>7</sup> Although RACE cites Rule 2.4(e) to support its argument that Fenn’s Verification should be considered evidence of Arakelian’s authorization of RACE to be her representative, Rule 2.4(e) also provides in pertinent part that “When a document is verified by the attorney or representative, he or she must set forth in the affidavit or declaration why the verification is not made by the party....” Fenn’s Verification failed to explain why the Verification was not made by Arakelian. In addition, the Verification did not contain any statement that Arakelian authorized RACE to be her representative.

authorized RACE to be her representative. RACE now seeks to cure its earlier deficiency by including Arakelian's declaration and the declarations of two others in RACE's interlocutory Motion for Reconsideration. However, RACE had ample opportunity to adequately prepare its NOI. RACE prepared its NOI but failed at the outset to include evidence of authorization from Arakelian.

RACE should not be permitted to pick and choose what information it will provide to the Commission and when it will provide that information. (See D.02-05-042, p. 24.) As noted in the decisions which discuss interlocutory appeals, if RACE is permitted to decide what information it provides and when, this will frustrate the Commission in the orderly performance of its regulatory functions. (D.00-05-018, p. 5; D.99-06-051.) It will also result in interlocutory appeals on procedural and evidentiary matters, as this decision demonstrates.

RACE also argues that the declarations of Johnson and Didonian, which were included in the Motion for Reconsideration and not in RACE's NOI, establish that RACE was authorized to intervene on behalf of its coalition members. This argument is not persuasive because RACE's NOI failed to mention these two individuals or the organization that their declarations list them as belonging to.

We now turn to the issue of significant financial hardship. RACE argues that § 1804(a)(2)(B) "gives RACE the option of presenting evidence of a hardship either when it submits its NOI or when it submits its claim for compensation." This argument ignores what RACE presented in its NOI. Page 4 of RACE's NOI referenced the requirements of § 1804(a)(2), and then listed its showing for three subdivisions of that code section. The third subdivision and heading that RACE's NOI listed was the following:

“(3) Section 1804(a)(2)(B) – A showing that participation in the hearing or proceeding would pose a significant financial hardship.” (NOI, p. 6.)

Under RACE’s heading description of § 1804(a)(2)(B), RACE stated the following:

“As stated above, Lynda Arakelian, a PG&E customer who has authorized RACE to represent her in this proceeding, cannot afford, without undue hardship, to pay the cost of effective participation, including advocate’s fees, expert witness fees, and other reasonable costs of participation; thus RACE’s participation or intervention without an award of fees or costs would impose a ‘significant financial hardship’ as defined in 1802(g) of the Public Utilities Code, qualifying RACE to receive compensation from the Commission for reasonable advocate’s fees, reasonable expert witness fees, and other reasonable costs of preparation for and participation in R.04-01-025 as outlined in 1803(b) of the Public Utilities Code, provided that RACE’s presentation makes a substantial contribution to the adoption, in whole or in part, of the commission’s order or decision.” (NOI, pp. 6-7.)

By referencing § 1804(a)(2)(B) with the statement of “A showing that participation in the hearing or proceeding would pose a significant financial hardship,” and the statement regarding Arakelian’s authorization and her inability to afford the costs of participating in this proceeding, it is evident that RACE’s intention was to make its showing of financial hardship in its NOI. Based on RACE’s own statements in its NOI, we can only conclude that the NOI Ruling was correct when it concluded that RACE had opted and intended to make its showing of significant financial hardship in its NOI. Our conclusion in this regard is further supported by RACE’s concluding statement in its NOI that:

“Section 1804(b)(1) provides that when the showing of financial hardship is included in the notice of intent to claim

compensation, the administrative law judge will issue a preliminary ruling within 30 days addressing whether the customer will be eligible for an award in the proceeding. ... RACE submits that we have met all of the requirements of Section 1804(a) and therefore should be found eligible for compensation in this proceeding.” (NOI, pp. 7-8.)

As noted in the NOI Ruling, RACE’s NOI failed to include “any of Arakelian’s pertinent financial information to support RACE’s claim that it would be a significant financial hardship on Arakelian to participate in this proceeding.” (NOI Ruling, pp. 6-7.) RACE now seeks to cure this second defect by submitting Arakelian’s financial information under seal as an attachment to the Motion for Protective Order.

As discussed earlier, RACE should not be permitted to pick and choose the information it provides and when it provides that information. RACE opted under § 1804(a)(2)(B) to make its financial hardship showing in its NOI, and then failed to make an adequate showing in the NOI of Arakelian’s financial hardship. RACE should not be allowed to “unring” the bell and to cure its financial hardship defect by submitting its showing after it elected to make its showing in the NOI. As noted in the previously mentioned decisions about interlocutory appeals, to allow RACE to do so would frustrate the Commission in the orderly performance of its regulatory functions.

We further note that had RACE not made a showing of financial hardship in its NOI, that the NOI ruling would not have addressed RACE’s eligibility for compensation because of § 1804(b)(1). Therefore, RACE’s argument that it should now be allowed to make its showing of significant financial hardship in its Motion for Reconsideration of a ruling that should have never issued, is an

acknowledgement on RACE's part that it failed at the outset to make an adequate showing of a significant financial hardship in its NOI.

RACE's final argument is that if it failed to properly serve the NOI, that this failure should not cause RACE to be ineligible for intervenor compensation. This argument of RACE disregards the underlying problems with RACE's NOI as discussed above and in the NOI Ruling. The NOI ruling did not base RACE's ineligibility for intervenor compensation solely on RACE's deficient service.

Although RACE is steadfast in its belief that it "always complies with the requirements for service and is unaware of any problems in its past performance," this does not correlate with our staff's observations of RACE's filings. For example, the September 3, 2004 assigned Commissioners' ruling regarding RACE's motion "for a determination of applicability of the California Environmental Quality Act to the Phase I Draft Decision" stated in footnote 1 that: "As of today's ruling, RACE's motion has not been filed with the Docket Office because RACE failed to include a certificate of service and a service list with its submission."

Another example<sup>8</sup> of RACE's deficient service was noted in footnote 1 of Pacific Gas and Electric Company's (PG&E) July 7, 2004 response in opposition to RACE's "appeal of quasi-legislative categorization." Footnote 1 of PG&E's response states:

"Although Rule 6.4 gives parties 15 days to respond to RACE's appeal (which is dated June 28, 2004, but which PG&E received only received [sic] on June 29, after the assigned Administrative

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<sup>8</sup> The Commission's Docket Office has also electronically notified representatives of RACE on other occasions about filing defects in connection with RACE's pleadings.

Law Judge informed RACE that their service was defective), PG&E is answering early and quickly because the Commission has provided notice that it may consider RACE's appeal at its July 8, 2004, business meeting." (PG&E, July 7, 2004 Response, p. 1, fn. 1.)

We note that § 1801.3(b) states that the provisions of the intervenor compensation statutes "shall be administered in a manner that encourages the effective and efficient participation of all groups that have a stake in the public utility regulation process." The term "efficient participation" includes complying with the intervenor compensation statutes, as well as compliance with our Rules of Practice and Procedure.

We encourage everyone to participate in our proceedings. However, parties must adhere to the requirements set forth in the Public Utilities Code and in our rules and decisions, and as explained in the Commission's Program Guide. As demonstrated in the NOI ruling and as discussed above, RACE failed to meet these requirements when it was required to do so. For the reasons stated above, RACE's Motion for Reconsideration of the NOI Ruling should be denied.

Since RACE opted to make its showing of significant financial hardship in its NOI, but failed to do so, the Motion for Protective order should be denied. Since the material which RACE and Arakelian seek to have protected contains personal financial information, the Docket Office should be directed to shred or otherwise destroy the information that is contained in the sealed envelope attached to the Motion for Protective Order.

## **V. Comments on Draft Decision**

The draft decision of the ALJ in this matter was mailed to the parties in accordance with § 311(g)(1) of the Public Utilities Code and Rule 77.7 of the Rules of Practice and Procedure.

The Utility Reform Network (TURN) filed comments on the draft decision. TURN recommends that the draft decision be rejected and that RACE be allowed to cure the defects in its NOI. We have considered TURN's comments, but we do not adopt TURN's proposed course of action.

## **VI. Assignment of Proceeding**

Michael R. Peevey and Susan P. Kennedy are the Assigned Commissioners, and Steven A. Weissman<sup>9</sup> and John S. Wong are the assigned ALJs in this proceeding.

## **Findings of Fact**

1. The June 18, 2004 Scoping Memo described the procedure for seeking intervenor compensation in this proceeding.
2. RACE and two other entities filed their respective NOIs.
3. The NOI Ruling determined in pertinent part that RACE did not meet the eligibility requirements of § 1804, and is ineligible to file a claim for an award of compensation in this proceeding.
4. RACE's Motion for Reconsideration requests that the NOI Ruling be reconsidered and that RACE be found eligible to file a claim for an award of compensation.
5. The Motion for Protective Order includes financial information which is intended to establish that a significant financial hardship exists.
6. The NOI Ruling noted that all three entities seeking intervenor compensation purport to make a showing in their respective NOIs that their participation would pose a significant financial hardship, and for that reason the

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<sup>9</sup> At the time RACE's NOI was filed, David K. Fukutome was the co-assigned ALJ.

NOI Ruling addressed their eligibility for intervenor compensation pursuant to § 1804(b)(1).

7. The NOI Ruling concluded that RACE's NOI and its Motion to Intervene failed to establish that RACE qualifies as a customer who has been authorized by a customer to be its representative.

8. The NOI Ruling's second reason for concluding that RACE was ineligible for an award of intervenor compensation was because RACE failed to make a sufficient showing about significant financial hardship by not including any of Arakelian's pertinent financial information.

9. The NOI Ruling's third reason for denying RACE's eligibility for intervenor compensation was because of RACE's failure to serve the NOI on the assigned ALJs and possibly on others as well.

10. RACE's Motion for Reconsideration does not challenge the NOI Ruling regarding RACE's attempt to qualify for intervenor compensation as a Category 2 customer.

11. D.98-04-059 contains the statement that a representative authorized by a customer connotes a more formal arrangement where a customer, or a group of customers, selects a presumably more skilled person to represent the customers' views in a proceeding.

12. The Program Guide contains two references that a Category 2 customer "must provide evidence of authorization from at least one customer."

13. RACE's NOI failed to include evidence that Arakelian authorized RACE to be her representative.

14. Fenn's Verification to the NOI failed to explain why the Verification was not made by Arakelian.

15. Fenn's Verification to the NOI lacks the nexus to establish that it was Arakelian who authorized RACE to be her representative.

16. RACE now seeks to cure the evidence of authorization defect by including Arakelian's declaration and the declaration of two others in its Motion for Reconsideration.

17. RACE should not be permitted to pick and choose what information it will provide to the Commission and when it will provide that information.

18. RACE's argument that it is now making its showing of significant financial hardship in its Motion for Reconsideration ignores what RACE presented in its NOI regarding significant financial hardship.

19. Based on the statements made in RACE's NOI, the NOI Ruling was correct when it concluded that RACE had opted and intended to make its showing of significant financial hardship in its NOI.

20. The NOI ruling stated that RACE's NOI failed to include any of Arakelian's pertinent financial information to support RACE's claim of significant financial hardship.

21. RACE now seeks to cure the showing of significant financial hardship defect by including Arakelian's financial information as part of the Motion for Protective Order.

22. The NOI Ruling did not base RACE's ineligibility for intervenor compensation solely on RACE's deficient service.

23. RACE's service and filing deficiencies have been pointed out to RACE by the Commission staff.

**Conclusions of Law**

1. To provide finality to RACE's NOI issue, the Motion for Reconsideration has been referred to the full Commission for a determination pursuant to Rule 65.

2. An entity seeking intervenor compensation must demonstrate that it qualifies as a customer, as that term is defined in the intervenor compensation statutes, when the NOI is filed.

3. RACE's NOI failed to include evidence of authorization from Arakelian.

4. Permitting RACE to decide what information it provides, and when, would frustrate the Commission in the orderly performance of its regulatory functions and result in interlocutory appeals on procedural and evidentiary matters.

5. RACE opted to make its financial hardship showing in RACE's NOI, and then failed to make an adequate showing in the NOI.

6. Since a ruling regarding significant financial hardship is not needed unless a showing of significant financial hardship has been made in the NOI, RACE's Motion for Reconsideration of the NOI Ruling is an acknowledgement by RACE that it failed at the outset to make an adequate showing of a significant financial hardship in its NOI.

7. The term "efficient participation" in § 1801.3(b) includes complying with the intervenor compensation statutes and with the Commission's rules and decisions.

8. RACE failed to meet the requirements of the intervenor compensation statutes when it was required to do so.

9. RACE's Motion for Reconsideration and the Motion for Protective Order should be denied.

10. The Docket Office should be directed to shred or otherwise destroy the information contained in the sealed envelope attached to the Motion for Protective Order.

**O R D E R**

**IT IS ORDERED** that:

1. The “Motion for Reconsideration of Administrative Law Judge’s Ruling Regarding Notices of Intent to Claim Compensation,” which was filed by the Ratepayers for Affordable Clean Energy (RACE) on September 22, 2004, and which seeks reconsideration of the August 24, 2004 administrative law judge’s ruling determining that RACE was not eligible for compensation in this proceeding, is denied.

2. “Lynda Arakelian’s Motion for Protective Order Regarding Personal Financial Information,” which was filed on September 22, 2004, is denied.

a. The Docket Office is directed to shred or otherwise destroy the financial information that is contained in the sealed envelope attached to the motion for a protective order.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.